IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.115 OF 2006
IN
CONTEMPT PETITION NO.69 OF 2005

Narinjan Singh Bajaj & Ors. ..Petitioners.

V/s.

Thane Municipal Corporation, Thane & ors..Respondents.

And

Shaikh Jaibunnisa Abdul Latif & Ors. ..Respondents.

Mr.S.M.Oak, advocate for petitioners/applicants.

Mr. R.S.Apte, advocate for respondent Nos. 1 and 2.

Mr. P.S.Dani with Sandesh Deshpande for respondent Nos. 5 to 9.

Mr. Sandesh Deshpande for Power of Attorney i.e. R.No.5A.

CORAM: A.M.KHANWILKAR,J

DATE : SEPTEMBER 13, 2006.

P.C. :

1. Heard counsel for the parties. Perused the averments in the application. The ground as stated in the application on which petitioners/applicants pray that the order dated 15th June, 2006 passed by me be reviewed and recalled cannot be countenanced. This is so because, the petitioners/applicants herein have had questioned the correctness of the said order before the Apex Court by way of Petition for Special

Leave to Appeal(Civil) No.13872 of 2006, which came to be dismissed on 1st September, 2006. On the same day present application has been filed before this court without disclosing the fact that the petitioners/applicants have carried the matter in appeal before the Supreme Court against the self-same Judgment and Order. Secondly, assertion made in this application cannot be the basis to dismiss the contempt petition or for that matter recall of Judgment and order dated 15th June, 2006. In the Contempt Petition, the sole issue that will have to be considered is: whether the petitioners/applicants herein have shown sufficient cause for non-compliance of the earlier order passed by this court which was passed after considering merits of the case. The court had granted time to vacate the suit premises to the petitioners/applicants herein on giving undertaking. Inspite of that undertaking, whether there was any justification for the petitioners/applicants herein for not vacating premises within specified time. Those are the issues which will have to be considered in the Contempt Petition and not the merits of the case, which is the attempt made in the light of assertion made in the present application. Even if the first order passed by this court or for that matter any court of

competent jurisdiction was to be found as illegal or incorrect. That would not give any right to the litigant to not comply with the directions contained in such order. This position is no more res-integra. Apex Court in the case **of Tayabbhai M. Bagasarwalla and Anr. V/s. Hind Rubber Industries Pvt.Ltd. & Ors. 1997(3) SCC 443 had** occasion to consider this aspect. Understood thus, it is obvious that the present application is yet another attempt to resort to abuse of process of court for which reason also the same cannot be entertained.

2. This application is therefore, dismissed.